
From: Blythe Semmer
To: Ossi, Joseph (FTA)
Sent: 8/31/2009 4:20:42 AM
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

Joe:

Thanks for sharing this message. One clarification about our regulations, though. When the regs were revised in 1999, additional structure was provided about the roles of parties to an MOA. The signatories needed to execute an MOA didn't change, but 800.6(c)(2) now describes the role of *invited* signatories.

Blythe Semmer

Advisory Council on Historic Preservation
202.606.8552

From: Joseph.Ossi@dot.gov [mailto:Joseph.Ossi@dot.gov]
Sent: Thursday, August 27, 2009 5:40 PM
To: Renee.Marler@dot.gov; Ted.Matley@dot.gov; James.Barr@dot.gov
Cc: Edward.Carranza@dot.gov
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

Yes, that is correct. The City was just a concurring signatory in 1992.

I would respond with the following points:

1. FTA assumed that the City's concurrence in the 1992 MOA was binding. FTA was not aware at the time of the City's current interpretation that concurrence is not binding on the City.
2. The ACHP used to discourage full signatories other than the Federal agency, SHPO, and ACHP on the theory that the Federal agency would have to take greater responsibility for implementing the agreement if other agencies were not full and equal parties to the agreement. The ACHP has learned a thing or two since that time about the relationship between Federal grant-making agencies and project sponsors and has changed its tune in consultations and now recognizes that the signature of the project sponsor who will implement the project is desirable. However, the regulation still reflects the former practice of only requiring signatures by the Federal agency, SHPO, and, if participating, the ACHP.

Joe Ossi
FTA Office of Planning and Environment
(202) 366-1613

From: Marler, Renee (FTA)
Sent: Thursday, August 27, 2009 4:30 PM
To: Ossi, Joseph (FTA); Matley, Ted (FTA); Barr, James (FTA)
Cc: Carranza, Edward (FTA)
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

All, These points look good. However, in my phone conversation with Toru and his counsel Jesse S. yesterday they said that Honolulu had been allowed to be a concurring party and not a full signatory in 1992. I did not dwell on this point, but told them we made this call based on the current circumstances. Two concerns:

- 1) I don't know if this assertion on their part is true; and
- 2) We should be prepared with a response since this was the only argument I could not rebut, and I would expect them to

raise it should they elevate this issue.

Do you know if they were a signatory or a concurring party in 1992? And how do you suggest we respond?

Thanks, Renee

From: Ossi, Joseph (FTA)
Sent: Thursday, August 27, 2009 11:30 AM
To: Matley, Ted (FTA); Marler, Renee (FTA); Barr, James (FTA)
Cc: Carranza, Edward (FTA)
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

I added a point on the long-term history of the project, and other minor tweaks.

Joe Ossi
FTA Office of Planning and Environment
(202) 366-1613

From: Matley, Ted (FTA)
Sent: Thursday, August 27, 2009 1:37 PM
To: Ossi, Joseph (FTA); Marler, Renee (FTA)
Cc: Carranza, Edward (FTA)
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

Joe, Renee, I'm not so experience with talking points, these may err on the side of too brief, plus I'm having trouble finding a way to say politely "your track record doesn't instail confidence"

Please review and comment.

From: Carranza, Edward (FTA)
Sent: Thursday, August 27, 2009 7:05 AM
To: Matley, Ted (FTA); Marler, Renee (FTA); Ossi, Joseph (FTA)
Cc: Rogers, Leslie (FTA); Borinsky, Susan (FTA); Ryan, James (FTA)
Subject: FW: Requirement for Honolulu to sign PA as a binding signatory

Ted/Renee/Joe: No good deed goes unheralded. Considering you three are well versed with the PA issue, can you as a unit assemble the talking points Matt requests below and back to me by COB today? Thank you in advance.

From: Welbes, Matt (FTA)
Sent: Wednesday, August 26, 2009 7:10 PM
To: Carranza, Edward (FTA); McMillan, Therese (FTA)
Cc: Rogers, Leslie (FTA); Borinsky, Susan (FTA); Longo, David (FTA)
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

Ed,

Thank you for the notice. Please craft 2-3 talking points from the information below that can be used by Peter if the Mayor calls, as he did last week, and email them to the people on this message.. Thank you.

Matthew Welbes
Executive Director
Federal Transit Administration, TOA
1200 New Jersey Ave SE
Washington DC 20590
202-366-4040
matt.welbes@dot.gov

AR00127875

From: Carranza, Edward (FTA)
Sent: Wed 8/26/2009 11:23 AM
To: Welbes, Matt (FTA); McMillan, Therese (FTA)
Cc: Rogers, Leslie (FTA); Borinsky, Susan (FTA)
Subject: FW: Requirement for Honolulu to sign PA as a binding signatory

Therese/Matt: This issue is floating around and of which, as a heads up, Peter may get a call out of the blue Honolulu horizon from the Mayor/Toru. FTA staff has worked hard with the Honolulu group, but we repeatedly, and consistently, noted to this grantee, as with any grantee, that we as FTA will not compromise any Federal element of the NEPA or New Starts approval process. Honolulu is testing our policy boundaries, but we do recognize the challenge and will continue to work with them. BTW, first bids on their D/B contract is due this coming Friday.

From: Ossi, Joseph (FTA)
Sent: Wednesday, August 26, 2009 7:22 AM
To: Carranza, Edward (FTA); Matley, Ted (FTA); Borinsky, Susan (FTA); Barr, James (FTA); Bausch, Carl (FTA)
Cc: Marler, Renee (FTA); Rogers, Leslie (FTA); Nguyen, Kim (FTA); Luu, Catherine (FTA); Tahir, Nadeem (FTA)
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

We are NOT holding Honolulu to a higher standard. I can name any number of Section 106 PAs and MOAs where the FTA grantee was a full signatory to the agreement, and I am not aware of any Section 106 agreement where the FTA grantee was not a full signatory.

Joe Ossi
FTA Office of Planning and Environment
(202) 366-1613

From: Carranza, Edward (FTA)
Sent: Tuesday, August 25, 2009 8:31 PM
To: Matley, Ted (FTA); Borinsky, Susan (FTA); Ossi, Joseph (FTA); Barr, James (FTA); Bausch, Carl (FTA); Ryan, James (FTA)
Cc: Marler, Renee (FTA); Rogers, Leslie (FTA); Nguyen, Kim (FTA); Luu, Catherine (FTA); Tahir, Nadeem (FTA)
Subject: RE: Requirement for Honolulu to sign PA as a binding signatory

This scenario just further begs the need for this grantee to address their "governance" authority, and of which we should be clear what we expect (as we did in the early Phoenix days) whenever we deliver the PE approval letter.

From: Matley, Ted (FTA)
Sent: Tuesday, August 25, 2009 5:21 PM
To: Borinsky, Susan (FTA); Ossi, Joseph (FTA); Barr, James (FTA); Bausch, Carl (FTA); Ryan, James (FTA)
Cc: Marler, Renee (FTA); Carranza, Edward (FTA); Rogers, Leslie (FTA)
Subject: Requirement for Honolulu to sign PA as a binding signatory

Susan,

Renee had a conversation today with the Legal Counsel and Toru at the City of Honolulu. They are unhappy with the requirement that they sign the 106 Programmatic Agreement (PA) as a party bound by the agreement (I'm not sure of the correct terminology). They preferred to sign as a consulting party because they had determined that they are not legally bound by this action and would not have to refer the agreement to the City Council for authority to enter into the agreement. As we discussed, we feel this requirement is necessary since they should get the City Council on board with the mitigation agreed to and FTA is concerned by their past history so as to wish for additional assurances on their part. They are concerned that this requirement will politicize the agreement, add time to the project timeline, and that FTA is holding them to different standard. Legally they argue that the LONP and eventually the FFGA would be sufficient to bind them to implement the PA.

Also be aware that the Advisory Council on Historic Preservation is involved in the Consultation and the development of this agreement and they have expressed that this would be unusual (but not illegal or unprecedented) to not have the City sign as FTA has suggested. We all agree that this is not a legal requirement but a requirement within FTA's authority as FTA deems

necessary.

Renee will be informing them that this requirement has been determined to be necessary by Region IX in consultation with TPE. Please be aware that this issue may be elevated to TPE or higher by Honolulu.

Ted Matley
Region IX

*Ted M Matley
FTA Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105
(415) 744-2590
fax (415) 744-2726
ted.matley@dot.gov*